

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CASE NO.

TRIVIDIA HEALTH, INC.,

Petitioner,

v.

NIPRO CORPORATION, a Japanese
Corporation,

Respondent.

DECLARATION OF SIGRID MCCAWLEY

I, Sigrid McCawley, declare as follows:

1. I am a partner at Boies Schiller Flexner LLP, counsel for Petitioner Trividia Health, Inc. (“Trividia”).

2. I submit this declaration in support of Trividia’s Petition to confirm a Final Arbitration Award against Nipro Corporation, the Respondent. The matters here are based on my personal knowledge and certain exhibits attached to my declaration, and if called upon to testify, I could and would testify competently thereto.

3. On September 18, 2020, an arbitral tribunal (the “Arbitral Tribunal”) duly constituted under the auspices of the International Chamber of Commerce (“ICC”) issued a final, binding arbitration award (the “Final Award”) in favor of Trividia and against Nipro in an arbitration captioned: *Trividia Health Inc.(U.S.A.) v. Nipro Corporation (Japan)*, ICC Arbitration Case No. 23464/MK/PDP. The ICC transmitted a final copy of the award to the parties on September 22, 2020. The Arbitral Tribunal issued the Final Award after a week-long evidentiary

hearing, and based on a voluminous factual record, and extensive briefing both before and after the evidentiary hearing. A true and correct copy of the Final Award is attached hereto as Ex. A.

4. With prejudgment interest for the time period specified by the Tribunal in its Final Award, at the interest rate specified by the Tribunal, the aggregate value of the Final Award, in favor of Trividia and against Nipro, is \$21,668,302.30.

The Arbitration Agreement

5. Trividia and Nipro entered into an International Distribution Agreement on October 27, 2015. A true and correct copy of the International Distribution Agreement is attached hereto as Ex. B. The Agreement was signed by Nipro Diagnostics, Inc., the name by which Trividia was known at the time,¹ and Nipro Corporation.

6. The Agreement established that disputes would be settled through arbitration. Section 16.1 of that Agreement states: “All disputes and differences of any kind arising under this Agreement, including the existence or continued existence of this Agreement and the arbitrability of a particular issue, which cannot be settled amicably by the parties, shall be submitted to final and binding arbitration. The arbitration shall be conducted, in English, and shall be submitted to the International Chamber of Commerce (“ICC”) in New York City, New York, to be conducted in accordance with the provisions of the Rules of Arbitration of the International Chamber of Commerce in effect on the date of such controversy or claim as in effect at the time of the arbitration.”

¹ See Partial Final Award of October 16, 2018, attached hereto as Ex. C, at ¶15. Nipro Diagnostics Inc. was subsequently renamed Trividia Health, Inc.

The ICC Arbitration

7. Trividia made a request for arbitration in a submission dated February 27, 2018.
8. Nipro answered that request in a filing dated April 16, 2018.
9. The Arbitral Tribunal was duly constituted by the ICC on April 25, 2018, with the appointment of Mr. James W. Quinn and Dr. Tai-Heng Cheng, as co-arbitrators, upon Trividia's and Nipro's nomination, respectively, and on June 4, 2018, with the confirmation of Mr. Klaus Reichert, as president of the Arbitral Tribunal on the joint nomination of the co-arbitrators.
10. The Arbitral Tribunal issued a Partial Final Award, dated October 16, 2018. A copy of the Partial Final Award is attached as Ex. C. That award describes the procedural steps that preceded the Partial Final Award.
11. The Arbitral Tribunal convened a final hearing between December 16, 2019, and December 20, 2019.
12. As noted, the Arbitral Tribunal issued a Final Award on September 18, 2020, and transmitted a copy to the parties on September 22, 2020.
13. That Final Award describes the procedural steps from the time of the Partial Final Award until the issuance of the Final Award.
14. In its Final Award, the Arbitral Tribunal awarded Trividia: \$17,477,511.00 on Trividia's contract claim; \$2,400,000.00 in fees and costs; and \$50,000.00 in arbitration costs, for a total of \$19,927,511.00, plus prejudgment interest.
15. The Arbitral Tribunal awarded Trividia prejudgment interest on the award of \$17,477,511.00 at the PRIME rate plus 2% per annum from March 8, 2019, until the date of the Final Award. That amounts to \$1,740,791.30 in prejudgment interest.
16. The total amount due is \$21,668,302.30.

The Final Award Is Unsatisfied

17. Nipro has not paid Trividia the Final Award or any portion of the Final Award. Counsel for Trividia has communicated with counsel for Nipro, starting on September 24, 2020, regarding Nipro's payment to Trividia, but Nipro has not paid Trividia, or committed to pay Trividia, let alone to do so promptly.

FURTHER DECLARANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct and that I executed this declaration on October 9, 2020, in Fort Lauderdale, Florida.

